

**Notice of Allowability**

Application No.

10/056,806

Examiner

Michael Peffley

Applicant(s)

FRANCISCHELLI ET AL.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 8/27/2004.
2. ☒ The allowed claim(s) is/are 1-11 and 35.
3. ☒ The drawings filed on 25 January 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

Michael Peffley  
Primary Examiner  
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***Reasons for Allowance***

The following is an examiner's statement of reasons for allowance: applicant's amendments and comments are deemed to place the application in condition for allowance.

With regard to claim 1, applicant has added limitations previously indicated as allowable to distinguish over the prior art of record. In particular, the prior art fails to disclose the particular method of making a lesion comprising the step of selecting a desired power setting based on considering the probability of pops occurring during a subsequent procedure. A "pop" is defined as tissue which is too rapidly heating causing fluid within the cell to boil and the cell erupts causing damage to tissue. The prior art is silent with respect to considering power settings for a surgical procedure based on the probability of pops.

With regard to claims 22 and 28, applicant's arguments on pages 10 and 11 of the August 13, 2004 response are deemed persuasive. The Panics device is a catheter device which is meant to be located at tissue to create a linear lesion when the device is in a static relationship with tissue. There is no suggestion in the prior art of providing the Panescu device with a rigid shaft as set forth in the claims. Moreover, the prior art is again silent with respect to using an energization table which identifies power setting based on the possibility of pops as now set forth in claim 22.

Newly filed claim 33 recites a method for making a lesion similar to claim 1 and specifically recites that the electrode is drawn back-and-forth across the tissue. Again, Panescu teaches a static catheter device and there is insufficient suggestion in the prior

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art to motivate one of ordinary skill to provide the Panescu device as a movable instrument to treat tissue.

Finally, newly filed claim 35 recites an electrosurgical system including an energization look-up table, and specifically provides energization time period values for an electrode being drawn back-and-forth across tissue as a function of power and lesion depth. Again, there is no reason to motivate one of ordinary skill in the art to provide the Panescu look-up table with such information since there is no suggestion of moving the device back-and-forth across tissue.

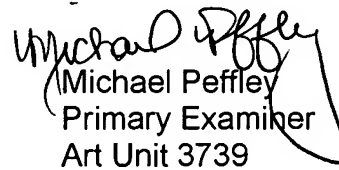
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Peffley whose telephone number is (703) 308-4305. The examiner can normally be reached on Mon-Fri from 6am-3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (703) 308-0994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
(Michael Peffley)  
Primary Examiner  
Art Unit 3739

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August 30, 2004